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99- 184

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1999

BRIAN SULLIVAN,

Petitioner,

v.

COUNTY OF SUFFOLK,
SUFFOLK COUNTY POLICE DEPARTMENT,
JOHN CAHILL and RENEE BUSCHOR, SUFFOLK
COUNTY DEPARTMENT OF SOCIAL SERVICES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

PETITIONER'S REPLY BRIEF

CHARLES ROBERT, ESQ.
Counsel of Record
ROBERT, LERNER & ROBERT
100 Merrick Road
Rockville Centre, New York 11570
(516) 766-7700

PRINTINGHOUSE PRESS 25 WEST 43RD STREET NEW YORK, NY 10036 (212) 719-0990

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Sullivan Reply

The petitioner files this Reply in response to the respondent's one page Memorandum in Opposition which incorporates by reference the respondent's Brief in Opposition in Matter of Callahan, Docket No. 99-80.

The petitioner respectfully submits that the Court should grant both petitions because the facts of these cases highlight the wisdom of Congress enacting a federal anti-lien statute and requiring the Medicaid agencies to seek recoveries from the defendants, not the plaintiffs, pursuant to the federal assignment statute. Both Frances Callahan and Brian Sullivan had liens attached to their tort settlements because of the State Medicaid agency's application of the New York State Lien Law.

The State Medicaid agency allows the local Medicaid agencies to place liens on the plaintiffs' recoveries because the State Medicaid agency does not require the local Medicaid agencies to secure recovery directly from the defendant tortfeasors pursuant to the federal collection statute by which the Medicaid recipients assign their causes of action to the Medicaid agency to recover medical expenses.

Sullivan highlights the use of the State lien statute because the Suffolk County Department of Social Services, the delegated agent of the State and federal Medicaid programs, did not pursue the cause of action against the County of Suffolk as it merely placed a lien on the plaintiff's net recovery. If the State of New York had complied with the federal assignment statute, it would have required the County to sue the defendants, and not place a lien on the plaintiff's recovery. In this case, because of the County's conflict of interest, the State could have been the assignee to recover Medicaid expenses from the defendants.

However, this did not occur because as Callahan and Sullivan both reveal, the New York State Medicaid Plan is presently implemented by the use of liens in violation of the federal anti-lien statute. Therefore, petitioner Sullivan respectfully requests that the Court grant this petition in tandem with the Callahan petition.

Charles Robert

CHARLES ROBERT, ESQ.